HIGH COURT OF JUDICATURE CHHATTISGARH : BILASPUR

SINGLE BENCH : HON'BLE SHRI S.R. NAYAK, C.J.

WRIT PETITION NO.443 OF 2006

PETITIONER DEFENDANT	Smt. Parvati Bai, W/o. Shri Kanhaiyalal Chakradhari, aged about 25 years, R/o. Village – Boriya Khurd, Tahsil and District Raipur (C.G.)
Vs.	
RESPONDENT PLAINTIFF	Bholaram Nirmalkar, S/o. Shri Charan Prasad Nirmalkar, aged about 44 years, R/o. Village-Boriya Khurd, Tahsil and District Raipur (C.G.)

Present : Shri Bhaskar Payashi , learned counsel for the petitioner.

(ORAL ORDER)
(Passed on 27th January, 2006)

This writ petition filed under Article 227 of the Constitution of India is directed against the order of the Court below dated 20.12.2005 allowing the application filed by the respondent-plaintiff under Order 6 Rule 17 of Code of Civil Procedure to amend the description of the suit schedule property. The contention of the learned counsel for the petitioner is that the respondent-plaintiff, on earlier occasions had filed two similar applications for amendment of description of the suit schedule property and those applications were rejected by the Court below and, therefore, the Court below had no jurisdiction to entertain the 3rd application filed for the same relief though it was interlocutory in nature.

(2) I have perused the order of the Court below impugned in this writ petition. This specific ground urged before me does not seem to have been urged before the Court below. If the petitioner or his counsel had

urged such a point before the Court below for decision-making and the Court below had overlooked such contention, the appropriate course for the petitioner is to bring that fact to the notice of the learned Judge and seek review of the order. Be that as it may, hypothesis urged before me that the Court once passes an order on interlocutory application, the Court would loose jurisdiction to entertain any subsequent application for same relief cannot be accepted as an absolute rule without any exception . It all depends upon the kind of the order made by the Court in a previous application. The matter brought before the Court relates to amendment of description of the suit schedule property. It is needless to state that the power exercised by the Court below very much falls within the domain of discretion and it cannot be said that the Court below has abused the discretion vested in it. Be that as it may, I do not find any jurisdictional flaw or material irregularity or failure of justice. This is not a case where this Court should step-in under Article 227 of the Constitution and correct the order of the Court below, which according to me, is just and fair. The writ petition, is, therefore, dismissed. No costs.

Sd/-
Chief Justice

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